

Volume 1 of 3, Part C

**IV. COMMITTEE ACTIONS AND FILINGS OF
THE PARTIES LEADING UP TO THE SEP-
TEMBER EVIDENTIARY HEARINGS**

a. Filings regarding Witnesses and Subpoenas

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**In The Senate of The United States
Sitting as a Court of Impeachment**

In re:)
Impeachment of G. Thomas Porteous, Jr.,)
United States District Judge for the)
Eastern District of Louisiana)

JUDGE G. THOMAS PORTEOUS, JR.'S WITNESS LIST

NOW BEFORE THE SENATE, comes Respondent, the Honorable G. Thomas Porteous, Jr., a Judge of the United States District Court for the Eastern District of Louisiana, and files his witness list. Judge Porteous plans, at this point in time, to call the following witnesses during the evidentiary hearing in this matter:

1. John M. Mamoulides
2. Judge M. Joseph Tiemann
3. S. J. Beaulieu, Jr.
4. Henry Hildebrand
5. Judge Ronald Barliant
6. Professor Rafael Pardo
7. Dianne Lamulle
8. Michael Porteous
9. Professor Dane S. Ciolino
10. Professor G. Calvin Mackenzie
11. Robert Rees
12. Melinda Kring (Pourciau)
13. Suzette Lacour Powers

14. Susan Hoffman, LCSW
15. James Barbee, M.D.
16. Adam Barnett
17. Daniel A. Petalas, Esq.
18. Peter S. Ainsworth, Esq.

The House of Representatives has indicated that it plans to call certain witness that, if not called by the House, will likely be called by the defense. Judge Porteous has included the names of those witnesses below.

19. Jacob Amato, Jr.
20. Robert Creely
21. Louis Marcotte
22. Lori Marcotte
23. Joseph Mole
24. Donald Gardner
25. Michael Reynolds
26. Bruce Netterville
27. Ronald Bodenheimer
28. Leonard Levenson
29. Claude Lightfoot
30. Rhonda Danos

Judge Porteous further reserves the right to testify in his own defense if he so chooses. The determination of whether Judge Porteous will testify in his own defense has not yet been made, and will depend on a number of factors, including the length of the evidentiary hearing.

Judge Porteous reserves the right to call additional witnesses, as needed, during the evidentiary hearing for the purposes of either direct, rebuttal, or impeachment evidence.¹ Judge Porteous reserves the right to call any witnesses not listed above but who are listed on the House of Representatives' witness list.

Respectfully submitted,

/s/ Jonathan Turley
Jonathan Turley
2000 H Street, N.W.
Washington, D.C. 20052
(202) 994-7001

/s/ Daniel C. Schwartz
Daniel C. Schwartz
John C. Peirce
P.J. Meidl
Daniel T. O'Connor
BRYAN CAVE LLP
1155 F Street, N.W., Suite 700
Washington, D.C. 20004
(202) 508-6000

Counsel for G. Thomas Porteous, Jr.
United States District Court Judge
for the Eastern District of Louisiana

Dated: August 5, 2010

¹ As discussed at yesterday's Committee hearing concerning selected pretrial motions, there remains a question of the right of the defense to call witnesses who are the source of statements that the House may seek to introduce through prior testimony or statements. Since the House has not informed the defense what statements may be introduced from the roughly prior 70 witnesses interviewed, the defense has no ability to list such witnesses for examination to challenge any statements introduced from the prior record.

CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2010, I served copies of the foregoing by electronic means on the House Managers, through counsel, at the following email addresses:

Alan Baron – abaron@seyfarth.com

Mark Dubester – mark.dubester@mail.house.gov

Harold Damelin – harold.damelin@mail.house.gov

Kirsten Konar – kkonar@seyfarth.com

Jessica Klein – jessica.klein@mail.house.gov

/s/ P.J. Meitl_____

In The Senate of the United States

Sitting as a Court of Impeachment

In re:)
Impeachment of G. Thomas Porteous, Jr.,)
United States District Judge for the)
Eastern District of Louisiana)

THE HOUSE OF REPRESENTATIVES' WITNESS LIST

Pursuant to the Senate Impeachment Trial Committee's (the "Committee's") Scheduling Order of June 21, 2010, the House of Representatives (the "House"), through its Managers and counsel, respectfully submits to the Committee the following list of witnesses who it reserves the right to call at the impeachment trial of Judge G. Thomas Porteous, Jr.:

1. Jacob Amato, Jr.
2. Ronald Bodenheimer
3. Robert Creely
4. Rhonda Danos
5. Jeffrey Duhon
6. Donald Gardner, Esq.
7. Professor Michael Gerhardt
8. Professor Charles G. Geyh
9. Rafael C. Goyeneche III
10. William Greendyke, Esq.
11. Former FBI Special Agent Bobby Hamil
12. FBI Special Agent DeWayne Horner
13. The Honorable Duncan Keir

14. Leonard Levenson, Esq.
15. Claude Lightfoot, Esq.
16. Lori Marcotte
17. Louis Marcotte
18. Joseph Mole, Esq.
19. Bruce Netterville, Esq.
20. Charles Plattsmier, Esq.
21. Hon. G. Thomas Porteous, Jr.
22. Mike Reynolds
23. Former FBI Special Agent Cheyanne Tackett
24. Aubrey Wallace

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Respectfully submitted,

THE UNITED STATES HOUSE OF REPRESENTATIVES



Adam Schiff, Manager

By



Bob Goodlatte, Manager



Alan I. Baron
Special Impeachment Counsel

Managers of the House of Representatives: Adam B. Schiff, Bob Goodlatte, Zoe Lofgren, Henry C. "Hank" Johnson, F. James Sensenbrenner, Jr.

August 5, 2010

**In The Senate of The United States
Sitting as a Court of Impeachment**

)
In re:)
Impeachment of G. Thomas Porteous, Jr.,)
United States District Judge for the)
Eastern District of Louisiana)
)

**JUDGE G. THOMAS PORTEOUS, JR.'S MOTION TO PROVIDE TRAVEL
FUNDING FOR EXPERT WITNESSES REMOVED FROM THE SUBPOENA LIST**

Judge G. Thomas Porteous, Jr. respectfully moves the Senate Impeachment Trial Committee (the "Committee") to provide limited travel funding for expert witnesses who have been removed from the subpoena list.

This week, defense counsel was informed that the Committee has decided to not issue subpoenas for expert witnesses. The defense does not seek reconsideration of that decision and understands the reluctance to compel the attendance of non-fact witnesses.¹ That decision, however, will have the critical effect of withdrawing Senate funding for the majority of the expert witnesses that the defense intends to call to testify at the evidentiary hearing. While the defense has been able to establish that one of its experts can pay for his own travel expenses, the other four expert witnesses listed by the defense require funding for these costs. If such funding is denied, the Senate may be deprived of critical testimony from accomplished experts on complex topics, which, in turn, would deny Judge Porteous the ability to adequately defend the charges against him. As such, and in the interests of fairness, Judge Porteous requests that the

¹ In the August 11, 2010 conference call with the Committee Staff and House counsel, Professor Turley noted that the defense would be filing this motion and viewed this as a new matter not addressed by the prior motion for defense funding. To that end, this motion has not been fashioned as one for reconsideration, as the defense is seeking funding only for witnesses who were removed from the subpoena list.

Senate pay for the travel expenses of the four expert witnesses included on Judge Porteous's subpoena request list, but who will not ultimately be subpoenaed by the Senate.

During the August 11, 2010 teleconference with the Committee Staff, the defense asked House counsel whether the House of Representatives would be paying for the travel expenses of its four expert witnesses. House counsel responded that they did not know but would find out. Despite additional attempt by counsel for Judge Porteous's to obtain this information from House counsel, the House has neither responded nor provided this information to the defense.

PROCEDURAL BACKGROUND

On June 29, 2010, Judge Porteous filed a Motion Requesting Funding for His Defense. That Motion included a request for reimbursement of travel expenses incurred by witnesses that Judge Porteous intended to call at the evidentiary hearing. The House of Representatives did not file a response to Judge Porteous's June 29, 2010 Motion.

On July 7, 2010, the Committee Staff met with counsel for both Judge Porteous and the House of Representatives. While Committee Staff raised the issue of expert witnesses, there was no indication that expert witnesses would be treated differently than fact witnesses.

On July 26, 2010, the Committee issued its Disposition of Judge G. Thomas Porteous, Jr.'s Motion Requesting Funding for His Defense. The Committee granted Judge Porteous's Motion in part, stating that the Senate would pay for the "travel expenses of subpoenaed witnesses." In so ruling, the Committee did not distinguish between fact and expert witnesses. The Committee also denied Judge Porteous's request for funds to cover his own travel expenses and any costs incurred by the defense.

On August 2, 2010, pursuant to a prior Committee Order, Judge Porteous submitted a list of subpoena requests for witnesses that he intended to call during the evidentiary hearing in this

matter. Judge Porteous listed the following four expert witnesses in that pleading: Professor G. Calvin McKenzie, former United State Bankruptcy Judge Ronald Barliant, U.S. Trustee Henry Hildebrand, and Professor Dane Ciolino. On August 5, 2010, also pursuant to the Committee's prior Order, Judge Porteous submitted his witness list, which included one additional expert, Professor Rafael Pardo.

The House of Representatives similarly included experts – specifically Judge Duncan Keir and Professor Charles Geyh – on its list of individuals to be subpoenaed. The House also added two additional experts, Professor Michael Gerhardt and Charles B. Plattsmier, to its final witness list.

On Wednesday, August 11, 2010, during a teleconference with the parties, the Committee Staff indicated that the Committee would not issue subpoenas for expert witnesses. Defense counsel indicated that, as a result of this decision, Judge Porteous would file this Motion seeking relief from the Committee concerning travel expenses for expert witnesses.

ARGUMENT

Judge Porteous has very limited resources and cannot afford to pay the travel expenses for four expert witnesses. His lawyers are appearing on his behalf on a *pro bono* basis. The proposed experts identified by Judge Porteous are likewise appearing on a *pro bono* basis. Those experts, however, require assistance with regard to their travel and lodging expenses. If the Senate does not agree to pay such expenses (as it is for other witnesses who are being subpoenaed), Judge Porteous may not be able to present those witnesses' testimony to the Senate, thereby greatly disadvantaging his ability to put forth a full and fair defense. Moreover, the Senate would be denied the assistance that such expert testimony would likely provide, including discussion and analysis of complicated topics such as bankruptcy law. For these

reasons, Judge Porteous requests that the Senate pay for the travel expenses associated with the expert witnesses that Judge Porteous has indicated that he intends to call at the evidentiary hearing.

The Committee Members have repeatedly stressed that they intend to guarantee a fair proceeding in which to receive and consider all credible information concerning the underlying charges. To that end, the Senate informed the parties that it would cover the travel expenses of subpoenaed witnesses. Among the various witnesses who will testify at the evidentiary hearing, independent expert witnesses are particularly important – as they will be called to address (among other things) key allegations that Judge Porteous violated ethics and bankruptcy rules and laws. Most, if not all, of these witnesses are located outside of the Washington, DC metropolitan area. Accordingly, the Senate’s decision, coming only a few weeks before the trial, and after subpoena lists and witness lists have already been submitted, to not subpoena expert witnesses and, thus, not pay for their travel expenses, will potentially bar their appearance at the evidentiary hearing – seriously undermining Judge Porteous’s ability to present his defense to the Senate. This problem is magnified by the fact that the House recently accepted only six percent of the stipulations proposed by the defense.² Since a number of the stipulations proposed by the defense but objected to by the House relate to issues for which expert testimony is necessary, the importance of expert witnesses testifying live before the Senate has been magnified.

The defense does not quarrel with the Senate’s decision not to subpoena non-fact witnesses to appear at the evidentiary hearing. Instead, by this motion the defense asks the full

² While the defense accepted 38.5% (119 out of 309) of the stipulations proposed by the House (not including additional stipulations to which the defense would agree if corrected), the House accepted only 6.2% (27 out of 435) of the stipulations proposed by the defense. Although these numbers are themselves not determinative of the propriety of the objections made by the parties, they are a telling sign of the House’s approach to narrowing the issues before trial and its overall approach in cooperating with the defense.

Committee to consider the impact that the loss of travel funding for the four witnesses identified above will have on Judge Porteous's ability to present a full rebuttal to the House's charges. While Judge Porteous intends to challenge whether some of the acts alleged in this case occurred at all, he also intends to show, through these experts, that many of the acts alleged in the Articles were not violations of either state or federal law and were not material transgressions in the eyes of those who practice in these areas. This evidence can be established only through these witnesses, who are nationally recognized as leaders in their respective fields.

Judge Barliant, Professor Pardo, and Trustee Hildebrand will each testify about specific issues related to bankruptcy proceedings – the subject of Article III, and an area of law that is complex and not easily understood by those not steeped in its language, practices, procedures, and history. The House has essentially conceded the need for such experts, having listed U.S. Bankruptcy Judge Duncan Keir and former U.S. Bankruptcy Judge William Greendyke as witnesses that they intend to call.

Judge Porteous has also listed Dane Ciolino, a professor from Loyola University who will provide factual testimony regarding the traditions and practices of bond-setting in Jefferson Parish and the State of Louisiana during the relevant time period, as well as expert testimony regarding applicable judicial and ethical standards. Professor Ciolino's testimony is important to this proceeding as he will provide objective analysis of these issues, backed by a deep understanding of the relevant regional practices and traditions. The House has likewise listed Charles Plattsmier as a witness. Although the House has not indicated the scope of his expected testimony, Mr. Plattsmier, given his experience and background, will likely also testify regarding topics similar to those that Professor Ciolino would address.

Finally, Judge Porteous has listed Professor G. Calvin McKenzie as an expert regarding the use of SF-86's, FBI background checks, the federal appointments process, and Senate confirmations, all of which is the subject of Article IV. The House has stated that it intends to call Professor Michael Gerhardt for similar testimony.

Each of the expert witnesses identified by the defense already agreed to forgo any payment for their time in preparing for and testifying at the evidentiary hearing. However, these witnesses agreed to serve with the understanding that their travel expenses would be reimbursed – in keeping with the Senate's custom for subpoenaed witnesses. While a modest expense (particularly when compared to the sizable budget for travel and compensation afforded to the House Impeachment team), the loss of these witnesses would present a critical blow to the defense in presenting evidence in this case.³ As such, this Motion implicates basic issues of equity and fairness.

Accordingly, Judge Porteous respectfully requests that the Committee authorize the payment of travel expenses for the experts listed by the defense.

Respectfully submitted,

/s/ Jonathan Turley
Jonathan Turley
2000 H Street, N.W.
Washington, D.C. 20052
(202) 994-7001

³ Based on recent activity, including traveling to Louisiana as soon as the defense submitted its witness list in order to meet with and interview those witnesses, the House Managers have apparently been provided with a sizable budget for their investigation and prosecution of Judge Porteous. Conversely, Judge Porteous has not been provided with any funds with which to prepare and present his defense.

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/s/ Daniel C. Schwartz
Daniel C. Schwartz
John C. Peirce
P.J. Meitl
Daniel T. O'Connor
BRYAN CAVE LLP
1155 F Street, N.W., Suite 700
Washington, D.C. 20004
(202) 508-6000

Counsel for G. Thomas Porteous, Jr.
United States District Court Judge
for the Eastern District of Louisiana

Dated: August 13, 2010

CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2010, I served copies of the foregoing by electronic means on the House Managers, through counsel, at the following email addresses:

Alan Baron – abaron@seyfarth.com

Mark Dubester – mark.dubester@mail.house.gov

Harold Damelin – harold.damelin@mail.house.gov

Kirsten Konar – kkonar@seyfarth.com

Nafees Syed – nafees.syed@mail.house.gov

/s/ P.J. Meitl

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UNITED STATES SENATE
OFFICE OF THE CLERK
WASHINGTON, D.C. 20510
TELEPHONE: (202) 512-1000
FACSIMILE: (202) 512-2000
WWW.Senate.gov

United States Senate

SENATE IMPEACHMENT
TRIAL COMMITTEE

WASHINGTON, DC 20510-6326

DISPOSITION OF JUDGE G. THOMAS PORTEOUS, JR.'S MOTION TO PROVIDE TRAVEL FUNDING FOR EXPERT WITNESSES

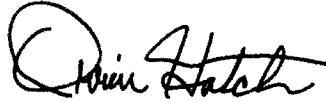
On August 13, 2010, Judge G. Thomas Porteous, Jr., filed a Motion to Provide Travel Funding for Expert Witnesses Removed from the Subpoena List. This Motion requests reimbursement of travel expenses incurred by expert witnesses who have not been subpoenaed by the Senate. The House of Representatives has not filed any response to this Motion.

The Committee's Order issued on July 26, 2010 stated that the Committee will reimburse the travel expenses of subpoenaed witnesses. The Committee will only subpoena fact witnesses. Therefore, Judge Porteous's motion is denied.

Dated: August 27, 2010



CLAIRE McCASKILL
Chairman



ORRIN G. HATCH
Vice Chairman

**In The Senate of The United States
Sitting as a Court of Impeachment**

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In re:)
Impeachment of G. Thomas Porteous, Jr.,)
United States District Judge for the)
Eastern District of Louisiana)
)

**JUDGE G. THOMAS PORTEOUS, JR.'S
MOTION TO ADD ONE WITNESS TO THE SUBPOENA LIST**

Judge Porteous respectfully moves the Senate Impeachment Trial Committee (the "Committee") to allow the addition of one witness to Judge Porteous's list of witnesses to be subpoenaed and called during the evidentiary hearing. There is good cause for this motion.

Judge Porteous requests that Darcy Griffin, who served as Judge Porteous's criminal clerk on the Twenty-Fourth Judicial District Court in Jefferson Parish, Louisiana, and who is still an employee of that Court, be added to Judge Porteous's lists of witnesses and individuals to be subpoenaed by the Committee.

Pursuant to the Committee's June 21, 2010 Order, on August 2, 2010, Judge Porteous submitted his "Requests for Subpoenas and Immunity." In that filing, Judge Porteous "reserve[d] the right to call witnesses not listed above that are otherwise required to serve as rebuttal witnesses." On August 5, 2010, Judge Porteous submitted his "Witness List." In that filing, Judge Porteous "reserve[d] the right to call additional witnesses, as needed, during the evidentiary hearing for the purposes of either direct, rebuttal, or impeachment evidence."

If allowed to appear, Ms. Griffin will testify regarding her experiences working for Judge Porteous on the state bench between approximately 1990 to 1994 and for other state court judges before and after Judge Porteous. Ms. Griffin's testimony will relate to her duties, including the

handling of bond requests and research related to criminal defendants' prior records in preparation for the setting, splitting, and/or reducing of bonds. Ms. Griffin will also testify about her communications with Judge Porteous, members of Judge Porteous's staff, the Marcottes, and jail officials regarding the bond process. Ms. Griffin may also testify about court records and her current experience as a supervisor of criminal clerks in the Twenty-Fourth Judicial District Court.

The lateness of Judge Porteous's request was necessitated by the fact that the defense was only able to speak to Ms. Griffin this afternoon, despite repeated attempts to do so earlier, including attempts to meet in person while the defense team was in Louisiana. Ms. Griffin has been, and still is, on vacation, having only been reached today by cell phone. The defense was reluctant to list a witness with which they had not spoken and who had not previously been called to provide testimony. The defense does not seek immunity for Ms. Griffin, but does request that the Committee issues a subpoena for her attendance at the trial. Given that only one week has passed since the submission of witness lists, Judge Porteous does not believe that this request will cause any prejudice to the House of Representatives.

As the Senators emphasized in the recent pre-trial motions hearing, their primary concern is to establish the facts of what occurred in this case. Ms. Griffin was the clerk who handled many, if not most, of the bonds referenced in the Articles of Impeachment. She has direct knowledge of how those bonds were set and/or modified – evidence that the Senators should have in reaching the merits of these allegations. Due to the absence of any prior criminal trial or indictment, there is no other source for this vital evidence.

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Respectfully submitted,

/s/ Jonathan Turley
Jonathan Turley
2000 H Street, N.W.
Washington, D.C. 20052
(202) 994-7001

/s/ Daniel C. Schwartz
Daniel C. Schwartz
John C. Peirce
P.J. Meidl
Daniel T. O'Connor
BRYAN CAVE LLP
1155 F Street, N.W., Suite 700
Washington, D.C. 20004
(202) 508-6000

Counsel for G. Thomas Porteous, Jr.
United States District Court Judge
for the Eastern District of Louisiana

Dated: August 12, 2010

1996

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2010, I served copies of the foregoing by electronic means on the House Managers, through counsel, at the following email addresses:

Alan Baron – abaron@seyfarth.com

Mark Dubester – mark.dubester@mail.house.gov

Harold Damelin – harold.damelin@mail.house.gov

Kirsten Konar – kkonar@seyfarth.com

Nafees Syed – nafees.syed@mail.house.gov

/s/ P.J. Meitl